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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,472	10/27/2003	James Pangerc	0275Y-357COC	2507

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/694,472	Applicant(s) PANGERC ET AL.	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL** 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-7, 10-21, 23 and 25 is/are rejected.
- 7) ☒ Claim(s) 2, 4, 8, 9, 22 and 24 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10-27-03</u> | 6) <input type="checkbox"/> Other: ____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wenner et al. (Wenner).

Wenner discloses a display package comprising a front blister surface (outer edge surfaces of two legs 28, the surfaces adjacent bin 42) having an opening (the space between the two outer edge surfaces), a rear blister surface (the surfaces formed for the cavity that receives the bin 42) and a storage container (bin 42) having a front side (which becomes a flat outer bottom side when bin 42 is folded down) and a rear side (which becomes a top upper open side when the bin 42 is folded down) and a hinge (formed by pins 54 received within holes 62). Since the container is formed from thin plastic material, this defines the blister in “blister surface.”

Claims 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Capy.

Capy discloses a combination storage container and display package comprising a storage container (the two top most trays 4), with a first container portion (tray 4) hingedly coupled to a second container portion (another tray 4), the first and second portions have an overlapped, closed configuration when both trays are folded up and an un-overlapped, side-by-side open configuration when both trays are folded down (see Fig. 1B, 2A and 2B), the display package is the housing holding the trays 4, the display package includes a front surface (the outer right side surface as shown in Fig. 1B, this surface includes the cavity for the tray 4) and a rear surface (the

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outer left side surface as shown in Fig. 1B, this surface includes the cavity for the tray 4), the cavities in the front and rear surfaces are configured to receive the hinge portions of the respective trays when the storage container is in the side-by-side un-overlapped position, the front surface includes an opening which is the open end of the front surface cavity. Capy discloses the invention except for the blister

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Capy.

Capy discloses a display package with a plurality of fold down storage containers with a similar fold down structure to Wenner. Capy discloses the invention except for the blister in the blister surface. It is believed that a blister defines a molded plastic surface. Official notice is taken that the manufacture of components from molded plastic is well known in the container art. It would have been obvious to modify the material of Capy to be molded plastic for ease in manufacturing from a readily available material which is relatively inexpensive.

Claims 1, 3, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over German reference No. (29517259).

The German reference discloses the invention except for the plastic material of the blister for "blister surfaces." It would have been obvious to modify the material of the German

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reference to be molded plastic for ease in manufacturing from a readily available material which is relatively inexpensive.

Claims 5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Capy in view of Czopor, Jr. (Czopor).

Capy discloses the invention except for the insert card. Czopor teaches an insert card. It would have been obvious to add an insert card with product information for the reasons advanced by Czopor in col. 4, lines 21-23 for the identification of the articles and compartments, for decoration and for advertising.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context; means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.


Claims 11-20 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-20 of prior U.S. Patent No. 6,698,609 to Pangerc et al. (Pangerc). This is a double patenting rejection. Although the claims are not copied verbatim to be exactly the same, the claims are deemed to incorporate the same limitations and cover identical subject matter.

Claims 2, 4, 8, 9, 22 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc